Supreme Court, U.S.
FILED
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,

Petitioner

v.

CITY OF KIRTLAND, and
WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and
INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Ohio Workers' Compensation law excludes injured workers from receiving Workers Compensation for Occupational Diseases involving solely psychiatric conditions [*i.e.*, there is no physical element]. The Ohio Workers 'Compensation law also prohibits a common law tort suit by an injured worker against his employer where the employer has complied with the Ohio Workers 'Compensation law.

The Question presented is: Does excluding the class of individuals who have a psychiatric condition with no physical component violate Equal Protection of the Law under *U.S. Const. Am. XIV* where (1) the class of individuals who have a psychiatric condition with a physical component are entitled to participate; (2) the class of individuals with stress caused physical problems are entitled to participate and (3) there is no remedy available to injured workers in the class for their injury because the workers' compensation law bars compensation for this type of injury and also bars any other type of lawsuit against the employer. where the employer has complied with the Workers Compensation Act.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

RONALD ANDOLSEK,

Petitioner,

v.

CITY OF KIRTLAND,

and

WES TRIMBLE, ADMINISTRATOR,

BUREAU OF WORKERS' COMPENSATION,

and

INDUSTRIAL COMMISSION OF OHIO,

Respondents.

Petition For Writ of Certiorari To The Court of Appeals
Eleventh Appellate District Lake County, Ohio

The petitioner, Ronald Andolsek respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Lake County, Ohio Court of Appeals, entered in the above action on November 14, 1994.

OPINIONS BELOW

The decision of the Ohio Supreme Court refusing jurisdiction over this case is reported at 72 Ohio St.3d 1420 and is reprinted in the appendix hereto, p. A-2, *infra*. The decision of the Ohio Supreme Court denying Petitioner's motion for rehearing from its refusal of jurisdiction is reported at 72 Ohio St.3d 1541, and is reprinted in the appendix hereto, p. A-1, *infra*.

The decision of the Lake County Court of Appeals is reported at *Andolsek v. City of Kirtland* (1994), 99 Ohio App.3d 333, and is reprinted in the appendix hereto, p. A-5, *infra*. The decision of the Lake County Court of Common Pleas is unreported, and is reprinted in the appendix hereto, p. A-14, *infra*.

JURISDICTION

The Ohio Supreme Court on June 14, 1995, denied Petitioner's motion for rehearing. The motion for rehearing asked the Ohio Supreme Court to reconsider its decision, dated May 3, 1995, refusing jurisdiction over Petitioner's appeal.

Petitioner sought to have the Ohio Supreme Court review the decision of the Eleventh Appellate District, Lake County, Ohio, dated November 14, 1995, which is the judgment sought to be reviewed in the instant petition.

This petition for Writ of Certiorari is being docketed within ninety days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

> . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws. . .

Ohio Revised Code Section 4123.01:

> (C) . . . "Injury" does not include:
>
> (1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease

Ohio Revised Code Section 4123.68:

> As used in this section and Chapter 4123. of the Revised Code, "occupational disease" means a disease contracted in the course of employment
>
> * * *

> . . . A disease which meets the definition of an occupation disease is compensable pursuant to Chapter 4123. of the Revised Code . . .

Ohio Revised Code Section 4123.74

> Employers who comply . . . shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee . . .

STATEMENT OF THE CASE

A. How the Federal Question Was Presented below

This case arose on a motion for judgment on the pleadings filed by the Respondent Administrator. In response to this motion, Petitioner indicated

> Plaintiff opposes the motion on the grounds that the statutory and case law authority relied upon by the [Respondent] are unconstitutional and deprive the plaintiff of equal protection under the law.

The Court of Common pleas granted the motion to dismiss.

After the Court of Common Pleas granted the motion, Petitioner appealed to the Court of Appeals for Lake County. Under Assignment of Error No. 1 Petitioner argued that:

> To deny workers who suffer from stress caused psychiatric conditions from any opportunity to participate in the workers compensation fund violates equal protection of the law under *Ohio Constitution Art. I, Section 11* and *U.S. Constitution, Amendment XIV.*

The Court of Appeals held against Petitioner, finding

> we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution . . .
>
> *Andolsek v. Kirtland*, (1994), 99 Ohio App.3d 333, 336

Similarly, in the memorandum in support of jurisdiction filed in the Ohio Supreme Court, Proposition of Law I indicated that

> A law which excludes an employment caused psychiatric/stress condition from workers compensation violates the injured worker's right to equal protection of the laws. . . .

The Ohio Supreme Court refused jurisdiction over this case.

B. Statement of Facts[1]

Officer Andolsek suffered an occupational disease in the course of and arising out of his employment with the City of Kirtland [hereinafter "City"].

Officer Andolsek worked as a police officer for the City. While working for the City, in the performance of his job duties, Officer Andolsek contracted an occupational disease involving post-traumatic stress disorder, depression, and other psychiatric conditions. [hereinafter "psychiatric/ stress"]. [Plaintiff's Complaint paragraph 1]. It is undisputed that the psychiatric/stress condition occurred as a result of Officer Andolsek's employment.

Officer Andolsek included his application for benefits as part of his complaint. [Complaint paragraph 2]. According to this application, Officer Andolsek indicated

> I was the investigative officer on the Kirtland Cult Killings. I began this investigation in December of 1989. The investigation of this, the horror of the matter, the constant stress in investigating 13 murders and keeping evidence

---

1 **This case was decided on a "motion for judgment on the pleadings or motion to dismiss for failure to state a claim." Therefore, the allegations of the Complaint must be taken as true. *Tulloh v. Goodyear Atomic Corp.* (1992), 62 Ohio St. 3d 541, 544.**

> straight on the murders caused me to become totally stressed and depressed.

The record contains two medical reports from Dr. Battisti, the Psychologist treating Officer Andolsek, which further demonstrate that Officer Andolsek suffered these psychiatric conditions as a result of his employment, and his investigation of the Kirtland Cult Killings. Dr. Battisti stated that Officer Andolsek's problems "were diagnosed as post-traumatic stress syndrome. The cause of the stress was the intense investigation of the Kirtland Cult Murders." [Report of Dr. Batisti, dated April 14, 1992, attached to Plaintiff's Answers to Defendant's Interrogatories].

C. Procedural Posture

Plaintiff-Appellant, Ronald Andolsek filed for workers 'compensation. The employer, City of Kirtland, did not object to, or fight, the claim. However, the Ohio Industrial Commission denied the claim.

Mr. Andolsek, filed an appeal of the denial to the Lake County Court of Common Pleas. Defendant-Appellee, Administrator of the Bureau of Workers 'Compensation, filed a "motion for judgment on the pleadings or motion to dismiss for failure to state a claim."

The Court of Common Pleas granted this motion. Plaintiff-Appellant Andolsek appealed this decision to the Court of Appeals, which affirmed.

Mr. Andolsek filed a memorandum in support of jurisdiction in the Ohio Supreme Court, seeking to have that Court review the Court of Appeals' decision. The Ohio Supreme Court refused jurisdiction over the case.

Mr. Andolsek filed a motion for reconsideration of the Ohio Supreme Court's refusal of jurisdiction. The Ohio Supreme Court denied that motion on June 14, 1995.

This petition for Certiorari has followed.

D. Decision by the Lower Court

The Court of Appeals in this case determined that the Equal Protection clause was not violated

> we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution
>
> *Andolsek v. Kirtland*, (1994), 99 Ohio App.3d 333, 336

REASONS FOR GRANTING THE WRIT

A LAW WHICH EXCLUDES AN EMPLOYMENT CAUSED PSYCHIATRIC/ STRESS CONDITION FROM WORKERS' COMPENSATION VIOLATES THE INJURED WORKER S RIGHT TO EQUAL PROTECTION OF THE LAW. THE INJURED WORKER WITH THE PSYCHIATRIC/STRESS CONDITION IS DEPRIVED OF THE OPPORTUNITY TO RECEIVE INDUSTRIAL COMPENSATION FOR A PSYCHIATRIC/ STRESS CLAIM, EVEN THOUGH OTHER INDUSTRIALLY INJURED WORKERS ARE ENTITLED TO PARTICIPATE FOR PSYCHIATRIC OR STRESS-CAUSED CONDITIONS IF THERE IS A PHYSICAL COMPONENT. THE COMPLETE BAR OF ANY OPPORTUNITY TO RECEIVE DAMAGES OR COMPENSATION FOR THE HARM DONE VIOLATES EQUAL PROTECTION.

Mr. Andolsek suffered his psychiatric condition as a result of the efforts involved in his intense investigation of the Kirtland Cult Massacres, a significant criminal case. His work in this investigation aided the public of the City of Kirtland by resulting in convictions resulting from those murders.

The City has not objected to the claim for workers compensation filed by Mr. Andolsek. Nevertheless, the claim was disallowed by the Ohio Industrial Commission under the

provisions of an Ohio statute which specifically excludes psychiatric claims such as that suffered by Mr. Andolsek.

Had Mr. Andolsek suffered from a heart attack, or an ulcer, from his work he would be covered by the Ohio Workers' Compensation system. However, because there is no physical component to his problem he is excluded from coverage under the Ohio Workers' Compensation system.

Excluding work-related injuries from workers compensation because they are solely psychiatric in nature violates equal protection. *U.S. Const. Am. XIV.*

Ohio's Workers' Compensation system is not a state welfare system. It is a state-operated insurance system, paid for by employers, to cover employees injured as a result of their work. The purpose of Ohio's workers' compensation system is to ensure that an employee harmed as a result of his employment is not reduced to reliance on welfare. *see Ohio Constitution, Art. II, Section 35.* As the Comment to *Art. II, Section 35* indicates "This section was adopted to provide a system of compulsory insurance providing benefits for work-related injuries and occupational diseases."

This type of insurance system exists to provide coverage to a specific type of individual. Therefore, the normal rules which apply to generic social welfare programs do not apply.

All employers in Ohio must participate in the Ohio Workers' Compensation system.

This type of insurance known as workers compensation exists for a specific purpose; the legislature cannot eliminate a sub-class of employees who suffer harm as a result of their employment, solely because of the psychiatric nature of their claims.

The exclusion creates a class of people who are admittedly harmed by their work but are not protected by the Workers' Compensation law, due to the psychiatric nature of the claim. All other people harmed by their work are protected by the Ohio Workers' Compensation law. No justification for such an exclusion exists.

Ohio's Workers' Compensation law does not exclude all psychiatric claims. It permits coverage for psychiatric claims involving a physical element.

Ohio's Workers' Compensation law excludes only that class of individuals who have psychiatric claims with no physical element.

The law arbitrarily creates a class of individuals whose claims are excluded from coverage, even though the condition suffered may be medically proven.

The exclusion harms this class of individuals who have suffered a work related psychiatric condition.

The issue of psychiatric workers' compensation claims is an important nationwide issue; as is the question of whether it is proper for a state legislature to exclude a class of individuals from the opportunity for compensation.

Furthermore, under Ohio law a worker who suffers a work-related psychiatric condition is barred from seeking any remedy outside of the workers 'compensation system. *O.R.C. 4123.74.*

Therefore, this class of individuals is completely barred from any opportunity to recover for the harm done them. *O.R.C. 4123.74* limits workers who suffer a work-related harm to the workers' compensation system even though they are not entitled to receive workers compensation. Such workers may not resort to a common law suit.

Equal Protection is violated where a state completely bars workers who have been harmed in the course of their employment from the right to a remedy for the harm.

The state has created a class of workers suffering psychiatric conditions and has barred them by law from having any remedy. This is state discrimination against workers who have suffered psychiatric problems without physical harm, in their employment.

Such state-created discrimination is improper.

Whether the state may discriminate against individuals based on the psychiatric nature of their claim is a matter of national concern in this day and age [for example, national anti-discrimination statutes such as the *Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq.*, demonstrate the important public interest in preventing discrimination against the disabled].

The issue of whether or not a state may by statute bar an entire class of individuals from coverage -- for no reason other than that their psychiatric claim lacks a physical component -- is of vital importance to all workers.

Because the state's classification violated the Constitutional Equal Protection requirements, the Court should accept jurisdiction of this case.

A. THE EXCLUSION OF PSYCHIATRIC/ STRESS CONDITIONS VIOLATES EQUAL PROTECTION BECAUSE IT IMPROPERLY CREATES TWO CLASSES OF INJURED WORKERS, ONE OF WHOM IS DENIED COMPENSATION; THERE IS NO BASIS FOR THE REQUIREMENT OF A PHYSICAL COMPONENT, OR A "TOUCHING", IN ORDER FOR THERE TO BE COMPENSATION

It is undisputed that Officer Andolsek suffered his psychiatric condition as a result of his employment. Ohio Workers' Compensation law denies him participation in the Ohio Workers' Compensation fund for this condition even though it is undisputed that the condition for which compensation is sought is work-related. *Rambaldo v. Accurate Die Casting (1992)*, 65 Ohio St.3d 281.

To deny workers who suffer psychiatric/stress conditions from any opportunity to participate in the workers

compensation fund violates equal protection of the law under *U.S. Constitution, Amendment XIV.*

Ohio's Workers' Compensation system currently permits compensation for psychiatric conditions which have a physical component, but denies compensation for psychiatric conditions which have no physical component.

It is completely irrational for the Ohio Workers Compensation law to compensate some psychiatric conditions (those with a physical component, *see, e.g., Edwards v. AT & T* (1989), 42 Ohio St.3d 119), but not others (psychiatric/stress conditions), even though the psychiatric/stress condition may be proved to be work related with equal or greater certainty than psychiatric conditions with a physical component.

The system establishes two classes of workers with psychiatric problems: 1) workers with solely psychiatric conditions and 2) workers who have psychiatric conditions with a physical element.

Claimants in Class 2 are eligible for Worker's Compensation while claimants in Class 1 are not, even though both classes consist of workers who suffer psychiatric problems as a result of their employment.

The classification violates equal protection. Equal Protection "require[s] the existence of reasonable grounds for making a distinction between those within and those outside a designated class." *Kinney v. Kaiser Aluminum Corp.* (1975), 41 Ohio St.2d 120, 123.

There is no reasonable grounds for this distinction.

In effect, the requirement of a physical element is a requirement of a "touching."

No rational basis for a requirement of a "touching" exists. Over the years, the national trend in tort law has recognized this and moved away from the "touching" requirement. In Ohio, the requirement of a "touching" was eliminated for tort cases because:

> Having carefully examined the arguments in support of the contemporaneous physical injury rule, it is clear that continued adherence to the rule makes little sense. *Legal scholars who have considered the rule denying recovery in the absence of contemporaneous physical injury or impact are unanimous in condemning it as unjust and contrary to experience.*
>
> *Schultz v. Barberton Glass Co.* (1983), 4 Ohio St.3d 131, 134. (Emphasis added.)

Requiring a physical element before permitting compensation for psychiatric problems in the workers compensation area is also "unjust" and "contrary to experience." Therefore, it violates Equal Protection.

If medical testimony can establish the existence of a work related condition such as the psychiatric condition

suffered by Officer Andolsek, there is no reason to exclude such claims.

If there were a physical component to this case, it would not be argued that the claim was barred.

What justification exists for making a distinction based on whether or not there is a physical element? In Officer Andolsek's case had stress caused an ulcer and a psychiatric condition his claim would be compensable because there is a physical component. Absent the physical component, no recovery is available.

However, in both situations it is unarguable that the conditions are work-related. Because there is no basis for requiring a physical component, the physical limitation on psychiatric claims violates equal protection.

This issue has been previously raised and argued before the Ohio Supreme Court. However, the Ohio Supreme Court has refused to decide this issue, and dismissed those cases raising it. *see Connors v. Sterling Milk* (1993), 98 Ohio App.3d 711, dismissed as improvidently allowed in (1995), 72 Ohio St.3d 1208; *Harover v. City of Norwood* (1988), 48 Ohio App.3d 312, dismissed as improvidently allowed in (1989), 47 Ohio St.3d 607. The Ohio Supreme Court's decision in *Rambaldo v. Accurate Die Casting* (1992), 65 Ohio St.3d 281, did not address constitutional issues.

B. DENYING WORKERS' COMPENSATION TO WORKERS WHO CONTRACT A PSYCHIATRIC/STRESS CONDITION AS A RESULT OF THEIR EMPLOYMENT, BUT PERMITTING WORKERS' COMPENSATION FOR STRESS-CAUSED CONDITIONS WHICH HAVE A PHYSICAL ELEMENT, VIOLATES EQUAL PROTECTION

Equal protection is also violated because the law creates two classes of stress-caused conditions. Stress-caused physical conditions are compensable under the Ohio workers compensation system [*See, e.g., Oswald v. Connor* (1985), 16 Ohio St.3d 38 (stress causes death); *Ryan v. Connor* (1986), 28 Ohio St.3d 406 (stress causes heart attack)]; but stress-caused psychiatric conditions are excluded.

No valid reason exists for excluding stress-caused psychiatric conditions from compensation.

As long as sufficient medical evidence to prove the condition exists and was work-related can be provided, why should a psychiatric/stress claim be barred?

No reasonable basis exists for denying someone who suffers a stress-caused psychiatric problem as a result of their employment from workers' compensation. Professor Larson, a noted and respected authority in the field of workers compensation, criticizes the requirement of a "physical" element for recognition of a mental condition, because

> there is really *no valid distinction* between physical and `nervous' injury. Certainly modern medical opinion would support this view and insist that it is no longer realistic to draw a line between what is `nervous' and what is `physical.
>
> Larson, "Mental and Nervous Injury in Workmen's Compensation," 23 *Vanderbilt L. Rev.* 1243, 1253 (Nov. 1970). [Emphasis added].

C. NO RATIONAL BASIS EXISTS FOR BARRING WORKERS WITH PSYCHIATRIC/STRESS CLAIMS FROM WORKERS' COMPENSATION.

The current system creates a class of individuals who have suffered a condition as a result of their employment who are barred from any possibility of receiving Workers Compensation. This classification violates equal protection because there is no basis for such a distinction.

No reason to distinguish a claim solely on the basis of its psycho-logical or physical nature exists.

There are safeguards in the Ohio Workers Compensation system which apply to ensure the validity of allowed claims. If an employer believes a claim is invalid, it will appeal the claim to Court.

A contested claim will eventually wind up before a jury. Medical evidence will be presented by both sides. The jury will make credibility determinations, just as they do in any other case.

The Ohio Supreme Court recognized in *Schultz, supra.*, that in personal injury cases juries can make such determinations. Juries in Workers' Compensation cases can also make such determinations.

One claimed justification of a bar on psychiatric/stress claims is that it is difficult to determine the validity of such claims. However, administrative ease does not provide a valid justification for creating a classification.

The administrative ease justification was held invalid in *Kinney v. Kaiser Aluminum Corp.* (1975), 41 Ohio St.2d 120, where the Ohio Supreme Court said "recent United States Supreme Court decisions have struck down, as violation of Due Process, state statues creating conclusive presumptions erected for `administrative ease." *Kinney* at 124.

The Ohio Supreme Court held that the presumption in *Kinney* was invalid because an alternative would permit the goal of establishing causal connection to be reached without arbitrarily denying all such claims. The alternative "method is, of course, the utilization of the evidentiary hearing." *Kinney* at 125.

The alternative of a hearing would also permit psychiatric/stress claims to be considered and causal

connection established, without barring all psychiatric/stress claims.

Nor is preserving the fund a valid reason for a classification. *State, ex rel. Nyitray v. Indus. Comm.* (1983), 2 Ohio St.3d 173, 178. The fund, after all, exists to provide compensation for work-related conditions such as the present.

Because no valid reason for denying psychiatric/stress claims exists, the classification violates equal protection.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX

THE SUPREME COURT OF OHIO

1995 TERM

To wit: May 14, 1995

Ronald Andolsek, Appellant,	:	Case No. 94-2702
v.	:	RECONSIDERATION ENTRY
City of Kirtland.	:	
[Wes Trimble, Administrator, Bureau of Workers' Compensation, et al., Appellees.]	:	(Lake County)

IT IS ORDERED by the Court that the motion for reconsideration in this case be, and the same is hereby, denied.

(Court of Appeals No. 94L038)

s/_____
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

1995 TERM
To wit: May 3, 1995

Ronald Andolsek,	:	
Appellant,	:	Case No. 94-2702
v.	:	
City of Kirtland.	:	
[Wes Trimble,	:	
Administrator,	:	
Bureau of Workers'	:	ENTRY
Compensation,	:	
et al.,	:	
Appellees.]		

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Stewart Jaffy & Associates Co., L.P.A.

(Lake County Court of Appeals; No. 94L038)

s/_____
THOMAS J. MOYER
Chief Justice

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

STATE OF OHIO)
) SS.
COUNTY OF LAKE)

RONALD ANDOLSEK,

Plaintiff-Appellant,

-vs-

CITY OF KIRTLAND,

Defendant, CASE NO. 94-L-038

WES TRIMBLE,
ADMINISTRATOR,
BUREAU OF WORKERS
COMPENSATION, et al.,

Defendants-Appellees.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the assignments of error are without merit, and it is the judgment and order of this court that the judgment of the trial court is affirmed.

s/_____
PRESIDING JUDGE DONALD R. FORD

CACIOPPO, J., Ret.,
Ninth Appellate District,
sitting by assignment,

MAHONEY, J., EDWARD, Ret.
Ninth Appellate District,
sitting by assignment.

COURT OF APPEALS

ELEVENTH DISTRICT

LAKE COUNTY, OHIO

RONALD ANDOLSEK,

Plaintiff-Appellant,

-vs-

CITY OF KIRTLAND,

Defendant,

WES TRIMBLE, ADMINISTRATOR, BUREAU OF WORKERS COMPENSATION, et al.,

Defendants-Appellees.

JUDGES

HON. DONALD R. FORD, P.J.,
HON. MARY CACIOPPO, J., Ret., Ninth Appellate District, sitting my assignment,
HON. EDWARD J. MAHONEY, J., Ret., Ninth Appellate District, sitting by assignment.

ACCELERATED
CASE NO. 94-L-038

OPINION

CHARACTER OF PROCEEDINGS:	Civil Appeal form the Court of Common Pleas Case No. 93 CV 00755
	LEE FISHER ATTORNEY GENERAL
JUDGMENT: Affirmed.	
ATTY. JAMES D. KENDIS Rockefeller Building 15th Floor 614 West Superior Avenue Cleveland, OH 44113	MARK E. MASTRANGELO FRED J. POMPEANI ASSISTANT ATTORNEY GENERALS 615 Superior Avenue 12th Floor Cleveland, OH 44113-1899
ATTY. STEWART R. JAFFEY ATTY. MARC J. JAFFEY 306 East Gay Street Columbus, OH 43215	(For Defendants-Appellees)
(For Plaintiff-Appellant)	

FORD, P.J.

Appellant, Ronald Andolsek, appeals from the trial court's order dismissing his appeal and complaint for failure to state a claim upon which relief can be granted.

Appellant was employed by the city of Kirtland as a police officer. On March 23, 1992, he filed an occupational disease claim with the Ohio Bureau of Workers Compensation alleging that he was diagnosed as suffering from post-traumatic stress disorder, depression and burnout as a result of his duties in investigating the Kirtland cult killings. The district hearing officer disallowed his claim because it alleged a psychiatric condition without physical trauma. The regional board of review affirmed the disallowance, and the Industrial Commission refused appellant's appeal from the Board of Review. Appellant appeals the trial court's dismissal order, assigning the following as error:

> "1. The trial court erred in granting defendant's `motion for judgment on the pleadings or motion to dismiss for failure to state a claim' where the motion depends on application of a law which violates the injured worker's right to equal protection of the laws by depriving the injured worker of the opportunity to receive industrial compensation for a psychiatric/stress claim, where other industrially injured workers are entitled to participate for psychiatric or stress-caused conditions.

"2. The trial court erred in granting defendant's `motion for judgment on the pleadings or motion to dismiss for failure to state a claim' where granting such motion depends on application of a law which violates the injured worker's rights to receive compensation for a work related injury or occupational disease under the provisions of the Ohio Constitution creating the foundation for the Ohio Bureau of Workers Compensation system.

"3. The trial court erred in granting the defendant's motion which results from a narrow definition excluding psychiatric/stress claims from compensation in violation of the R.C. 4123.95 requirement for liberal construction."

In the first assignment, appellant argues that the trial court erred in dismissing his complaint for failure to state a claim because such decision was predicated on the application of law which violates appellant's right to equal protection.

Pursuant to Ohio's workers' compensation statutory scheme, compensation is sanctioned for a worker who is disabled by a mental condition resulting from a compensable work-related physical injury. R.C. 4123.01(C)(1); *State, ex rel. Anderson v. Indus. Comm.* (1980), 62 Ohio St.2d 166; *Rambaldo v. Accurate Die Casting* (1992), 64 Ohio St.3d 281. However, compensation is not available for workers

suffering mental conditions caused solely by job-related stress. Rambaldo, syllabus. Appellant contends that this situation violates is right to equal protection.

This argument has been advanced several times and has been rejected. *Connors v. The Sterling Milk Co.* (Nov. 4, 1993), Henry App. No. 7-93-12, unreported; *Zaricki v. Laco Die Casting Co.* (July 8, 1982), Cuyahoga App. No. 44254, unreported; *Neil v. Mayfield* (July 22, 1988), Montgomery App. No. CA 10881, unreported; *Fields v. City of Youngstown* (May 30, 1989), Mahoning App. No. 88 CA 89, unreported.

"The United States Supreme Court has held that, `[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Zaricki* at 3, quoting *Dandridge v. Williams* (1970), 397 U.S. 471, 485; see, also, *Connors* at 6. Provided a classification does not burden a suspect group, a statute should not be deemed violative of the Equal Protection Clause unless "the varying treatment of different groups or persons is so unrelated to achievement of any combination of legislative purposes that it can only be concluded that the legislature's actions were irrational." *Vance v. Bradley* (1979), 440 U.S. 93, 97; *Zaricki* at 3; *Connors* at 6. Because appellant does not assert that he falls within a suspect or fundamental classification, the appropriate standard of review is the rational basis test; therefore, provided the statutory framework is rationally related to a legitimate government interest, it will be upheld. *Connors* at 6.

Applying this test, we find that the exclusion for mental stress in the absence of a contemporaneous physical injury does not violate the Equal Protection Clause of the United States Constitution or the Ohio Constitution because:

> "(1) the state has a legitimate interest in maintaining the self-supporting nature of its Worker's *[sic]* Compensation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate interest in maintaining a contribution rate at a level that will not unduly burden participating employers." *Connors* at 7; see, also, *Zaricki* at 4; *Mayfield* at 5; *Fields* at 8.

This assignment is meritless.

In the second assignment, appellant contends that the legislature exceeded its authority under Article II, Section 35 of the Ohio Constitution because, in defining injury pursuant to R.C. 4123.01(C)(1), it excluded compensation for psychiatric injuries not resulting from a compensable work-related physical injury.

Article II, Section 35, Workmen's [Workers] Compensation, states, in pertinent part:

> "For the purpose of providing compensation to work[ers] and their dependents, for death,

> injuries or occupational disease, occasioned in the course of such work[ers] employment, *laws may be passed* establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, *determining the terms and conditions upon which payment shall be made therefrom.* (Emphasis added.)

"The purpose of Article II, Section 35 of the Ohio Constitution is to compensate workers and/or their dependents for injuries arising out of the course of employment. However, Section 35 does give the state the authority to determine what injuries are compensable." *Connors* at 8. Therefore, the legislature did not exceed its authority by excluding psychiatric injury not resulting from physical injury from the class of compensable injuries. *Connors* at 9. This assignment is meritless.

In the third assignment, appellant maintains that the trial court erred in dismissing his complaint because R.C. 4123.95 mandates that workers' compensation statutes are to be liberally construed in favor of employees' receipt of benefits.

R.C. 4123.01(C) states:

> "`Injury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. `Injury' does not include:

"(1) Psychiatric conditions except where the conditions have arisen from an injury or occupational disease;

"***."

The Supreme Court of Ohio has recently construed the foregoing statute and concluded "*** that by specifically excluding claims for mental conditions based solely on job-related stress from the definition of `injury,' the General Assembly intended that this type of claim not be compensable under the Workers' COMPENSATION Act***." *Rambaldo* at 287. Despite this, appellant argues that his claim is covered pursuant to R.C. 4123.95, which states, [s]ections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees."

R.C. 1.51 states:

"If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. *If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.*" (Emphasis added.)

Clearly, R.C. 4123.01(C)(1) is the special provision and R.C. 4123.95 is the general provision. There can be no question that it was not the legislature's manifest intent to have the general provision prevail over the special provision. See *Rambaldo* at 287. This assignment is meritless.

Based on the foregoing, the judgment of the trial court is affirmed.

s/_____
PRESIDING JUDGE DONALD R. FORD

CACIOPPO, J., Ret.,
Ninth Appellate District,
sitting by assignment,

MAHONEY, J., EDWARD, Ret.,
Ninth Appellate District,
sitting by assignment,

concur.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

RONALD ANDOLSEK Plaintiff,	:	CASE NO. 93CV 000755
-vs-	:	JOURNAL ENTRY
CITY OF KIRTLAND, et al	:	
Defendants.	:	January 31, 1994

Defendant Administrator, J. Wesley Trimble's motion for judgment on the pleadings or motion to dismiss for failure to state a claim is granted. Costs are assessed against plaintiff Ronald Andolsek.

IT IS SO ORDERED.

s/_____
JAMES W. JACKSON
Judge of the Court of Common Pleas

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